

## § 702.52

## 45 CFR Ch. VII (10–1–12 Edition)

and any other deliberations required or permitted by 5 U.S.C. 552b (d) and (e) and § 702.54 and § 702.55 of this subpart, are not meetings for the purposes of this subpart.

(3) The consideration by Commissioners of Commission business that is not discussed through conference calls or a series of two party calls by the number of Commissioners required to take action on behalf of the Commission is not a meeting for the purposes of this subpart.

(d) *Public announcement or publicly announce* means the use of reasonable methods, such as the posting on the Commission's website or public notice bulletin boards and the issuing of press releases, to communicate information to the public regarding Commission meetings.

(e) *Staff Director* means the Staff Director of the Commission.

### § 702.52 Open meeting requirements.

(a) Every portion of every Commission meeting shall be open to public observation, except as provided in § 702.53 of this subpart. Commissioners shall not jointly conduct or dispose of agency business other than in accordance with this subpart.

(b) This subpart gives the public the right to attend and observe Commission open meetings; it confers no right to participate in any way in such meetings.

(c) The Staff Director shall be responsible for making physical arrangements for Commission open meetings that provide ample space, sufficient visibility, and adequate acoustics for public observation.

(d) The presiding Commissioner at an open meeting may exclude persons from a meeting and shall take all steps necessary to preserve order and decorum.

### § 702.53 Closed meetings.

(a) The Commission may close a portion or portions of a meeting and withhold information pertaining to such meeting when it determines that the public interest does not require otherwise and when such portion or portions of a meeting or the disclosure of such information is likely to:

(1) Disclose matters that are:

(i) Specifically authorized under criteria established by an Executive Order to be kept secret in the interests of national defense or foreign policy and

(ii) In fact properly classified pursuant to such Executive Order;

(2) Disclose information relating solely to the internal personnel rules and practices of the Commission;

(3) Disclose matters specifically exempted from disclosure by statute (other than 5 U.S.C. 552b), provided that such statute:

(i) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or

(ii) Establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(4) Disclose trade secrets and commercial or financial information obtained from a person and is privileged or confidential;

(5) Involve accusing any person of a crime or formally censuring any person;

(6) Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(7) Disclose investigatory records compiled for law enforcement purposes, or information that if written would be contained in such records, but only to the extent that the production of such records or information would:

(i) Interfere with enforcement proceedings,

(ii) Deprive a person of a right to a fair trial or an impartial adjudication,

(iii) Constitute an unwarranted invasion of personal privacy,

(iv) Disclose the identity of a confidential source and, in the case of a record received by the Commission from a criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source,

(v) Disclose investigative techniques and procedures, or

(vi) Endanger the life or physical safety of law enforcement personnel;

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(8) Disclose information received by the Commission and contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions;

(9) Disclose information the premature disclosure of that would:

(i) In the case of information received by the Commission from an agency that regulates currencies, securities, commodities, or financial institutions, be likely to:

(A) Lead to significant financial speculation in currencies, securities, or commodities, or

(B) Significantly endanger the stability of any financial institution; or

(ii) Be likely to significantly frustrate implementation of a proposed action, except that this paragraph shall not apply in any instance where the Commission has already disclosed to the public the content or nature of its proposed action or where the Commission is required by law to make such disclosure on its own initiative prior to taking final agency action on such proposal; or

(10) Specifically concern the Commission's issuance of a subpoena or the Commission's participation in a civil action or proceeding, an action in a foreign court or international tribunal, or an arbitration.

(b) [Reserved]

### § 702.54 Closed meeting procedures.

(a) A meeting or portion thereof will be closed, and information pertaining to a closed meeting will be withheld, only after four Commissioners when no Commissioner's position is vacant, three Commissioners when there is a vacancy, or two Commissioners on a subcommittee authorized under 42 U.S.C. 1975a(e)(1), vote to take such action.

(b)(1) A separate vote shall be taken with respect to each meeting, a portion or portions of which are proposed to be closed to the public under § 702.53, and with respect to any information to be withheld under § 702.53.

(2) A single vote may be taken with respect to a series of meetings, a portion or portions of which are proposed to be closed to the public, or with re-

spect to any information concerning such series of meetings, so long as:

(i) Each meeting in such series involves the same particular matters, and

(ii) Is scheduled to be held no more than thirty (30) days after the initial meeting in such series.

(c) The Commission will vote on the question of closing a meeting or portion thereof and withholding information under paragraph (b) of this section if one Commissioner calls for such a vote. The vote of each Commissioner participating in a vote to close a meeting shall be recorded and no proxies shall be allowed.

(1) If such vote is against closing a meeting and withholding information, the Staff Director, within one working day of such vote, shall make publicly available by putting in a place easily accessible to the public a written copy of such vote reflecting the vote of each Commissioner.

(2) If such vote is for closing a meeting and withholding information, the Staff Director, within one working day of such vote, shall make publicly available by putting in a place easily accessible to the public a written copy of such vote reflecting the vote of each Commissioner, and:

(i) A full written explanation of the decision to close the meeting or portions thereof (such explanation will be as detailed as possible without revealing the exempt information);

(ii) A list of all persons other than staff members expected to attend the meeting and their affiliation (the identity of persons expected to attend such meeting will be withheld only if revealing their identity would reveal the exempt information that is the subject of the closed meeting).

(d) Prior to any vote to close a meeting or portion thereof under paragraph (c) of this section, the Commissioners shall obtain from the General Counsel an opinion as to whether the closing of a meeting or portions thereof is in accordance with paragraphs (a)(1) through (10) of § 702.53.

(1) For every meeting closed in accordance with paragraphs (a)(1) through (10) of § 702.53, the General Counsel shall publicly certify in writing that, in his or her opinion, the